

## **URBAN AREA PLANNING COMMISSION**

### **MEETING MINUTES**

**January 8, 2014 – 6:00 P.M.**

**Council Chambers**

#### **1. ROLL CALL:**

The Urban Area Planning Commission met in regular session on the above date with Chair Gerard Fitzgerald presiding. Vice Chair Jim Coulter and Commissioners Lois MacMillan, Loree Arthur, Blair McIntire, David Kellenbeck, and Dan McVay were present. Commissioner Thomas Regan was absent. Also present and representing the City were Associate Planner Glover and Associate Planner Gindlesperger, and Assistant Director Cobabe.

#### **2. ITEMS FROM THE PUBLIC: None.**

#### **3. CONSENT AGENDA:**

##### **a. MINUTES: December 11, 2013.**

Commissioner Arthur noted corrections needed to be made to the minutes on pages 13 and 69 because the vote on the Parkview issue was recorded incorrectly and did not match with the subsequent Findings of Fact related to that case. Associate Planner Glover stated that staff had already made the proper corrections in the copy of the minutes before Chair Fitzgerald that he will sign following approval.

Chair Fitzgerald looked at those pages of the minutes before him and verified those corrections were made. He then stated, I believe on page 3 at the top the sentence says we closed it at our prior hearing and when we cut, we didn't cut the record, we kept the record open... so that word should be "kept," as I believe we kept it open. Right? Shall we make that correction? Okay, is there anything else that anyone found? Seeing none, I would entertain a motion to accept the Consent Agenda. With no further discussion, the following vote took place.

##### **b. FINDINGS OF FACT:**

(1) 13-20100021 & 13-30100002 ~ Parkview Terrace Development Multi-Family Development; Major Site Plan Review and Major Variance.

(2) 13-10500001 & 13-30100004 ~ Challis Heights Planned Unit Development; Major Site Plan Review and Major Variance.

### **MOTION/VOTE**

**Commissioner MacMillan moved and Vice Chair Coulter seconded to approve the consent agenda as amended for corrections. The vote resulted as follows: "AYES": Chair Fitzgerald, Vice Chair Coulter and Commissioners MacMillan, Arthur, Kellenbeck, and McVay. "NAYS": None. Abstain: McIntire. Absent: Regan. The motion passed.**

### **4. PUBLIC HEARING:**

#### **a. 13-20100030: Gillaspie Bed & Breakfast (Minor Site Plan Review)**

**PROPOSAL:** An application for a Bed & Breakfast within an existing residence located at 1236 SW Ironwood Drive, in the R-1-8 zoning district.

**OWNERS:** Ron & Kathy Gillaspie

**APPLICANTS:** Same

**LEGAL:** 36-06-24-AC, TL 1000

**PLANNER:** Justin Gindlesperger

Chair Fitzgerald stated, I will open the public hearing for consideration of the application filed as 13-20100030: Gillaspie Bed & Breakfast, Minor Site Plan Review. We will begin the hearing with a Staff report followed by a presentation by the applicant, statements by persons in favor of the application, statements by persons in opposition to the application, and opportunity for additional comments by the applicant and Staff. After that has occurred, the public comment portion will be closed and the matter will be discussed and acted upon by the Urban Area Planning Commission. Is there anyone present who wishes to challenge the authority of the Commission to hear this matter? Seeing none, does any Commissioner wish to abstain from participating in this hearing or declare a potential conflict of interest? Seeing none, are there any Commissioners who wish to disclose discussions, contacts, biases or other ex parte information they have received prior to this meeting regarding the application? Seeing none, in this hearing the decision of the Commission will be based upon specific criteria which are set forth in the Development Code. All testimony which apply in this case are noted in the Staff Report. It is important to remember that if you fail to raise an issue with enough detail to afford

the Commission and the parties an opportunity to respond to the issue you will not be able to appeal to the Land Use Board of Appeals based on that issue. We will now have the Staff report.

*[Note: There was a momentary delay due to a problem with the computer system.]*

Associate Planner Gindlesperger stated, this is the Gillaspie Bed & Breakfast Minor Site Plan Review. The proposal is for two bedrooms, the two guestrooms, in an existing three-bedroom residence. The residence is existing on the site. There are no other modifications proposed at this time. It's just to use those two bedrooms for the guestrooms. The residence is located in the Rogue Willow Estates subdivision which is off of Ironwood Drive which is west of Reinhart Volunteer Park. Zoning in that area is R-1-8. The applicants are currently operating the bed and breakfast on the property. They advertise online through a B&B rental site. The existing residence is a little over 2000 square feet. It is approximately 2038 square feet, and that exceeds our minimum requirements for 400 square feet for every guest room. The bed and breakfast use is a permitted use in the R-1-8 zoning district. The property meets the minimum lot size setback base development standards for the zoning district. The property complies with the minimum landscaping requirements and they have adequate off-street parking for the residents and also for the guestrooms. The bed and breakfast requires one parking space for every guest room and one space for the proprietor. The property has a two-car garage and there is ample room on the property in the driveway for additional guests... for those two additional vehicles. It was originally stated that they could use the turnaround for the parking. However, we talked with our fire safety inspector and that is not the case, but there is ample in front of the garage. The turnaround needs to be kept clear for emergency vehicle access.

So again, there are two guestrooms in an existing three-bedroom residence. There are no other modifications. It's on Ironwood Drive which is the Rogue Willow Subdivision. This is the aerial photo of the vicinity and the property is highlighted in green. The property backs up to the Rogue River. Again, it's just west of Reinhart Volunteer Park. They are currently operating their bed-and-breakfast. They do advertise through the Airbnb website on line. It's a three-bedroom residence. They are proposing two guestrooms and they exceed the minimum sizing requirements. Again, there is adequate landscaping and adequate off-street parking.

Staff finds that that the use complies with the criteria for bed and breakfast which is in section 14 and also the Minor Site Plan Review in section 19. Again, the turnaround needs to be kept clear for emergency vehicle use. The applicants have been notified and they are okay

with that. Staff received several comments from adjacent neighbors concerning the proposed use. Their concerns included an increase in noise and traffic and also the incompatibility of the use with the CC&R's of the subdivision. The CC&R's are not review criteria and are therefore not considered as part of the approval process. Staff has not proposed any specific mitigation measures to alleviate the concerns from these comments. At the time of the development, however, the property was developed in compliance with the base development standards which are intended to mitigate potential land-use conflicts. Appropriate signage on the use may alleviate guests arriving at the wrong address. The increase in traffic on the subdivision streets, which are public streets, did not seem to be appreciable for the use and, as mentioned previously, the property does feature adequate landscaping.

This is a picture from the front of the structure looking north towards Ironwood. The turnaround that was mentioned is there in the foreground. Again, it needs to be kept clear for emergency vehicle access. This is another picture from the front of the structure looking more northwest towards Ironwood. You can see the front of the adjacent property. The subject parcel does share a driveway with that adjacent property for... I think it's about 60 feet. These are two views supplied by the applicant at the rear of the property. The top one is looking southwest towards the Rogue River and then the bottom photo there is looking directly south from the structure towards the river. With that, Staff recommends that the Planning Commission approve the proposed bed and breakfast use.

Chair Fitzgerald asked, are there questions from Commissioners to Associate Planner Gindlesperger concerning his presentation?

Commissioner MacMillan stated, I'm just curious.... On the conditions of approval -- I'm just asking this because I don't understand why -- is it a requirement to have a developed up-to-date register of guests?

Associate Planner Gindlesperger stated, that is part of the approval criteria in the Development Code, yes.

Commissioner MacMillan asked, why is that? Is that just one of the criteria?

Associate Planner Gindlesperger stated, I'm not certain. I think it's just to insure that they are complying with all the other approval criteria. There are criteria that they can only lease their guestrooms for 15 days every 30 days. It's just a checks measure.

Commissioner MacMillan stated, that cleaned it up. Thank you.

Commissioner McIntire asked, does this conform to the American Disabilities Act as far as reserved parking for the handicapped and is it handicapped available? By law does that have to be in place?

Associate Planner Glover stated, as a home occupation bed-and-breakfast it's not required to meet commercial standards for handicapped disabilities.

Commissioner McIntire stated, Got it...thank you.

Chair Fitzgerald asked, is there anyone else? See none, then does the applicant care to speak? Okay, if you would just state your name and address for the record please sir.

Ron Gillaspie (1236 SW Ironwood Drive, Grants Pass) stated, I own and reside there, as well as my wife Kathy Gillaspie. I first want to just give you guys a little bit of background on who we are. We are longtime residents here... what we consider to be long-term residents and homeowners, for over nine years in Grants Pass. We have family here. We own and operate a local business here in downtown Grants Pass and have for over six years. I am also a contracted employee through the State. I wanted to give you that little bit of information to let you know that we didn't just arrive on the first plane. We are very involved in our community here and we are very committed to increasing the quality of the community. We do that in our jobs daily as well as our existing business here in the community (downtown).

One of the reasons why we wanted to make this a bed-and-breakfast is because we have been fortunate enough to be involved in staying at other bed-and-breakfasts and we really enjoyed it. We felt like this would be a great opportunity for us to kind of see the shoe on the other foot. One of the things, I guess, I want to do is I want to thank you for being at this hearing... everyone involved. One of the things that we are applying for from the Commission is a permit to operate a bed-and-breakfast. That is exactly what it is. It's a bed-and-breakfast. This property is not used for transient or hotel purposes. I just wanted to make that clear, that

we have been a part of our Association for long before the presiding president was involved and several presidents before that, and we've been involved and committed on that level. I would just like to reiterate that we are definitely on board with what the Association is doing. However, this is an area that is zoned R-1-8 in this district. We are very much involved with trying to increase the community. This particular area has a lot of traffic in terms of boats, the Hellgate Excursions, jet skis, and young people rafting up and down the river and things like that. As you can see, it's very open and we enjoy this activity as homeowners -- and we have for several years. We don't look at it as not being anything disruptive. We also are committed to using our property for that... to add good things to the community.

One of the things that I just wanted to say is that we have heard some concerns and we do take those seriously. However, we at this time have never heard any formal complaints from anyone in our neighborhood about noise or cars being displaced on the property or on the streets. Also, we do have letters from local community members, real estate agents, and also a neighbor I'd like to read that if you guys are open to it. I've also submitted a copy. I've submitted the letters and what I would like to do is just....

Chair Fitzgerald interrupted, are you going to read letters?

Mr. Gillaspie stated, yes, I would just like to read one letter and then another letter that would also be from a local real estate agent who has worked in the area.

Chair Fitzgerald asked, do these address the criteria before the Commission tonight Sir?

Mr. Gillaspie stated. Yes. One of them does and another one would be a character reference.

Chair Fitzgerald stated, your character is not being impugned here tonight sir.

Mr. Gillaspie stated, well then I'm going to go ahead and read a letter from our neighbor that lives in the subdivision. It's from Rita Day. "Ron and Kathy -- If it is determined that operating your bed and breakfast is not in violation of the HOA CC&R's, I would gladly write and sign a letter saying that we have not been bothered by your bed and breakfast. I think that is a criterion to overcome to not be in violation of HOA guidelines. In the meantime, I'm sending you this email stating that we live across the street from your house. We can see your house from our side dining room window and from our front yard and we have never noticed any cars

parked on the street in front of your house nor have we noticed any excessive cars parked in your driveway. Your house sits back on the lot quite a distance from the street. There appears to be plenty of room for an additional car or two to park in front of your house so that no cars would be parked on the street. We also have never heard any loud or bothersome noise coming from your house. In fact, we have noticed no activity that would indicate you are operating a bed and breakfast. Good luck, Rita.” Again, I just wanted to reiterate that this is just that.... It’s a bed-and-breakfast that we feel does not fall under the guidelines of transient hotel purposes. That would be what we are applying for, so with that, I would just close. Thank you.

Chair Fitzgerald asked, do any of the Commissioners have any questions for the applicant? None.... Thank you sir, you will have a chance later to sum up and rebut some of the comments that will be coming... perhaps. Now we will take comments from the public – first those in favor of the applicant who would care to come up and speak.

Lisa Leonard (1224 SW Ironwood Drive, Grants Pass) stated, which I believe my address is right next door to the person who wrote the letter, so I would probably be the closest opposite neighbor to them. Until I received a letter in the mail I did not know there was a bed and breakfast operating in my neighborhood, which is testament to the amount of... that I’ve not seen an increase in noise. I do believe that our CC&R’s and our HOA... There might be a question of as to the validity of the actual existence due to the age of the HOA. The title search when we bought our house here a year and a half ago it did say there was no legal HOA in effect. So technically I’m not a part of it, and will continue to not be a part of it, but I do want to say that with all the other issues that go on in neighborhoods I do believe that a high-quality bed and breakfast located in the subdivision is not going to be at all detrimental to our environment or our neighborhood. I wholeheartedly support it and encourage it. Thank you.

Chair Fitzgerald stated, thank you ma’am. Is there anyone else that would like to speak in favor of the application tonight? None, okay, now those that would like to speak against the application this is your time.

Betty Simpson (1192 SW Ironwood Drive, Grants Pass) stated, as a past president of the Rogue Willow Estates Homeowners Association, I have been asked to speak for the

Association at this time. My experience when I relocated to Grants Pass in 2005 mirrors the experience of many others in the subdivision. My realtor showed me various neighborhoods with an obvious mixture of incompatible uses. It was only after I indicated I could afford a higher financial level that I was shown Rogue Willow Estates; a quiet well-maintained residential neighborhood. My realtor explained that the development had a strong set of covenants, conditions and restrictions (CC&R's) and a homeowners association that worked to support them. Our declaration of reservations and restrictive covenants in Article 5, section 14 states "No dwelling constructed upon a lot within this subdivision shall be rented by the owner thereof for transient or hotel purposes; which shall be defined as a rental for any period less than 90 days, provided, however, that the owner shall have absolute right to lease the same provided that the lease is made subject to the terms, covenants, conditions, reservations, restrictions, easements and charges of lanes imposed upon the subject property by this declaration." The intent of section 14 is clear. All of our other homeowners accepted this declaration when they purchased their property. Frankly, we are puzzled as to why the City chooses not to include applicable CC&R's in criteria for Minor Site Plans and their accompanying brochure. Having a commercial, motel-like business operation in our residential neighborhood is not acceptable to a strong majority of our residents. We request your cooperation and support of Article 5, section 14 of our neighborhood CC&R's. Thank you.

Chair Fitzgerald stated, thank you ma'am. Is there anyone else that cares to speak in opposition to the application?

Carol Lebreton (1232 SW Ironwood, Grants Pass) stated, I'm next door to the Gillaspie's. My husband and I live next door to the Gillaspie's in Rogue Willow Estates. I'm handing you a document. I'd like to hand this to somebody, it's showing our CC&R's.

Chair Fitzgerald asked, did you want that put in the record? Please don't speak off of the microphone.

Ms. Lebreton stated, yes please. If you turn to the second to the last page you'll see highlighted wording preventing the Gillaspie's from renting out their house for any period of time less than 90 days. In summary, a bed and breakfast is not allowed in the Rogue Willow Estates subdivision. Section 12.010 of the City of Grants Pass Development Code states that one of the purposes of zoning districts in the City of Grants Pass is to serve as a basis for resolving



land-use conflicts. If one of the purposes of the City of Grants Pass Development Code is to reduce land-use conflicts, then I am stunned that this Planning Commission would grant the Gillaspie's request to establish a bed and breakfast in their residence when that use is expressly prohibited by the restrictive covenant applying to our subdivision. By approving the Gillaspie's request, this Commission is creating, rather than reducing land-use conflict because we, the landowners, will now have to proceed with litigation in court to enforce the restrictive covenants that prevents the Gillaspie's from operating a bed-and-breakfast within our subdivision. If you approve this request then you are sending a false message to the Gillaspie's that they are allowed to have a bed and breakfast in our subdivision. The solution for you as a Planning Commission is simple. To recite that the purpose of the Grants Pass Development Code is to serve as a basis for resolving land-use conflict, to recite the restrictive covenants recorded in the Josephine County deed records prohibit the Gillaspie's from using their residence in the Rogue Willow Estates subdivision as a bed and breakfast for transients -- state that because of the restrictive covenants you deny their request to allow a bed and breakfast for the purpose of resolving land-use conflict, which is the purpose of the Development Code. In the event you fail to follow this logic, then, at a minimum, your decision should state that the Gillaspie's use of their residence in the Rogue Willow Estate Subdivision is subjected to the restricted covenants recorded in the Josephine County deed records. Thank you.

Chair Fitzgerald stated, thank you ma'am. Is there anybody else that would like to speak in opposition to the application tonight?

Kathleen Nelson (1246 Osprey Drive, Grants Pass) stated, I do not live in the same community. I'm in an adjacent one called Rivers Edge. I'm so glad you have that satellite picture up there because you can see my house. I am two lots downriver. Mine is the little brown house that you can see two lots down. Next to my house you can see what looks like a gray band coming down. That is the community walkway in my community. Their lot is like a pipe stem or, I don't know if they call them flag lots here... compared to mine, in that they look in my backyard and I look in their front yard. They are down on the river, so they have the raised foundation -- the flow through foundation, so their front porch is up high. In my community, there is a six-foot limitation on shrubbery. I have brought a picture of their house as viewed from my patio and I'd like you to take a look at that. If you look on the left side of the picture you will see....

Chair Fitzgerald stated, Associate Planner Glover will take a look at that ma'am.

Ms. Nelson continued, you'll see their front porch and how visible....

Chair Fitzgerald interrupted, do you want that entered into the record ma'am?

Ms. Nelson stated, yes, please. The river access... the people that have stayed at there at the bed and breakfast have had river access. If you look down there, they can go down to the river. They can walk along the river and they can come up the sidewalk that is alongside my house. As matter of fact I've had occasions where I've seen strangers walking up the sidewalk coming from down by the river and I have no idea where they came from because I didn't see them leaving my community and walking down there. Also, there is a break in the hedge that's adjacent to my bedroom next to the sidewalk and that's where the police believe.... Well, we've had three burglaries on my street and the police believe that's where people are coming through. My concern is security. In one of the other pictures, you showed two pictures of the view from their house and the second picture you showed is my backyard you're looking at. They conveniently took the picture so they have a tree that's blocking the view of my patio. It's my dining room, my kitchen, and my master bedroom. The picture that they showed is part of my backyard. My big concern is security. I thought.... They are a young couple and I thought.... Because I noticed people over there, you know, people launching their boats and stuff. I just thought they are a young couple and have a lot of friends. Now that I've learned that it's a bed and breakfast and these are not their friends, these are strangers.... Also, as far as I know they both work. I think these people are being left at their home to do these things and that is what really has me concerned. Thank you.

Chair Fitzgerald stated, you're welcome ma'am. Is there anyone else who wishes to speak in opposition to this application?

John Vo (1207 SW Ironwood Drive, Grants Pass) stated, I've lived there for 12 years. I built this property on the property which was meant to be a home that we would always live in. It's a nice community. It's quiet. Our tax structures, I pay almost \$5000. This is nothing compared to the people that live next door to the applicant. They have nice homes and will pay much more. I think it's terribly wrong to have a bed and breakfast and strange people coming in. My objection is that it's a shared driveway. The next-door neighbor has people coming up and down his driveway. Secondly, these people work. They work in Medford and they are gone. Under the

carpet key? What do you expect? Just quite honestly, I ask each and every one of you, would you like this next door to you with unsupervised people running as they wish, with no one there to say, "Hey." I urge that this is turned down. It's not the place and the time. If I wanted to have a bed and breakfast close to me, I would have built a home on Center Street. Thank you.

Chair Fitzgerald stated, thank you sir. Would anybody else like to speak in opposition to the application?

Ellen McKee-Parks (1205 SW Ironwood, Grants Pass) stated, honestly, we did not know that there was a bed and breakfast in operation for two years because our house tends to be oriented to the back of our property. I did notice that there was more traffic and people were not waving. We moved up from California a year and a half ago and we chose to come to a residential area that had a strong covenant because we didn't want to live next to a potential trailer park or whatever. We also are here for our retirement years and we had plans on staying here for the rest of our lives. So now there are strangers going down the street who don't wave at us like everybody else used to, and my bigger concern about not just having friendly people.... We had a homeowner's association meeting and Ron came and explained things. He said that it's through this Airbnb web-based operation. He challenged us to go look at his website and make up our minds based on the pictures and the comments of their clients. Not quite half, but close to it, said there was no one there. It was very nice that there were notes left for them and a cold breakfast. There is even a picture of it provided there. They missed, because of coming and going... they didn't meet the proprietors. That is a concern. A bigger concern for me is setting precedence, because we believed this would be a quiet residential neighborhood and now that once the Commission decides that they can overturn the covenants next week it could be someone deciding they want to get a car repair out of their garage or a dog kennel or something like that. We will no longer be guaranteed what we believed was our right to buy in this, not necessarily a higher end development but a more expensive one. Also Ron said they didn't come in and buy this property recently with the intention of opening a B&B but they lived there. He is also a businessman in this community. That really concerned me that he was less than forward. If you're a businessman in his community with your own business you know of the permit process of needing licenses. To just turn your head and think that you can fly under the radar and collect money through this website Airbnb where they collect the money... It's kind of a brokerage. They may never even have any idea of who is coming to their building and they are not there to even see if they are unsavory characters.

There are no guarantees for us. There is no a guarantee this isn't a precedent setting thing. I also think it potentially is devaluing our property. If we're turning our legacy over to our children we don't want to have it impacted just because two people want to make a buck. I think this is most of my objection. I may have more. I wanted to get chickens but the covenants said no chickens and I complied, so I don't see why we should make a change just for somebody to make some money. Thank you.

Chair Fitzgerald stated, thank you. Does anyone else wish to speak in opposition to this application? Seeing none, does anyone want to speak in favor of this application?

Kathleen Gillaspie (1236 SW Ironwood Drive, Grants Pass) stated, we are the bed and breakfast. My husband Ron, I think he did a great job of explaining what we do there. I also want to say that we didn't take that picture conveniently. We took pictures because the City asked us to take pictures and we took a picture of... I didn't want to take a picture of something or not. For the lady, I don't even know where she lives but doesn't live in our Rogue Willow Estates... but I took the pictures because that was requested of me. I took three nice color pictures and turn them in because that was a requirement. I would like to say that we have heard that there has been a lot of noise and a lot of traffic. I think that moving into that community knowing there is a river right in your backyard.... We have the Boatnik parade. It's the loudest thing you are going to ever hear in your life. I'm sure you have been longtime residents. We've been there nine years. It's very exciting. It's very loud. I have no complaints. The jet boats come up and down like it's a freeway and I love it. If you have a complaint about it I think... If the neighbor has a complaint, that's something that's recognized. I hear bats and balls at the park. I hear screaming and yelling from many directions because it's a canyon effect. To say that there were four burglaries in that area, for one thing, I never heard about them -- which doesn't make any difference here nor there -- but the thing is, don't imply that they came from our property. The Airbnb site is in 193 countries. When we travel abroad, we go on that site. When you do go on the site, you are verified. We don't let everybody in our home. That is our private home. They get verified by driver's license, email, their license plate and various arrangements of things so that we can decide whether we want these people in our house or not. That is our right to say yes or no. I think it brings revenue to not only Ron and I, our pockets, but it also brings revenue to the City of Grants Pass. We supply a book on the bed when they come in and enter. It has a book full of restaurants up to the Crater Lake area...well, it's all local except maybe Crater Lake and the Oregon Caves. We didn't know we had to have

a business license... just to address the person that said about a business owner. We do have a hair salon and we've had that for several years in downtown Grants Pass. We have had complaints about noise and people increasing in cars. How would somebody know if that person is coming to our house and not waving at somebody? I have been in that neighborhood for nine years and I rarely get a hello from a neighbor. If you want to blame that wave on us, then I think it should be more factual than just what you think is going on. I also think that, it's just my opinion, there is rafting that goes on. We can't control what's going on at the edge of the river. That doesn't belong to us. You can fish there, legally. You can cook a fish if you want. We don't own that. If you want to use that property I think that's fine. It's a river. It belongs to everybody. The last thing I'm going to say is I heard there is a lot of noise and a lot of increased car activity. You can see the driveway. I don't know how long it is, but I don't like to walk it. It's too long. There is ample parking for more than two people and I heard that the Jacuzzi is a little too loud. With the boats and all the activity that goes along with being on the river, the hot tub is going to bother you? Well, there are usually just two people that stay at a time and we soak in the tub. What if Ron and I want to make some noise? Do we get the cops called on us? Which brings me to the last point, we have had nobody knock on our door to tell us that it's too loud over there. We've had no police reports. We haven't had anything that would make me believe it's something other than hearsay or maybe an attempt to nix this bed and breakfast. In the covenants, which I know it doesn't have anything to do with the City – the HOA CC&R's -- we are not a hotel and we are not a transient place and we don't have our house as a vacation rental. I wanted to make that very clear and that we approve the people that go through a rigorous background check. The people that can afford to stay there, I don't think they are going to come and just wreck our home and make things happen that will ruin our home because we have been there nine years. It's not like an expensive house but it's not a cheap one. We want to keep the neighborhood good as well. If anything did happen with noise, we would be there to make the noise go down. We haven't experienced the noise from our guests. They usually come in, go eat something in town, come back, maybe get in the hot tub and that's about it. We serve them a breakfast. It's not a cold breakfast. It is a breakfast with coffee and other things. If you want to say cold breakfast have at it. Thank you very much for being here.

Chair Fitzgerald asked, is there anybody else that would like to speak in opposition or in favor of the application? Seeing none, sir, would you like to have time to rebut the comments as the applicant since you were the one that took the position of the applicant sir?

Ron Gillaspie stated, I'm one of the applicants of this permit. My only answer would be, no, this is not a transient or hotel. This property is not used for that. It's strictly we are applying for a bed and breakfast permit and that is all that it is. Just to give you a little bit of background. There is a review process that is on our Airbnb listing for Rogue River Paradise in Grants Pass. The reviews and the guests on that and that is a current and up-to-date. It's consistently there for anyone to look at. We would also encourage you to look at some of the history of the guests that have come and stayed and you will be able to tell that we are on the premises and we let them know that we are available for them. We do reside in the home. That was it. Thank you.

Chair Fitzgerald asked, Staff, do you have a rebuttal?

Associate Planner Glover stated, I do want to comment that we provided you with a LUBA case that discussed CC&R's. We did have this reviewed by our City Attorney, who reiterated that the CC&R's are not criteria for this application to be judged by, so that's the difficult item ahead of you tonight. For the Site Plan Review, the CC&R's are not part of the criteria. You can find that information beginning on the bottom of page 132 of your packet and then up into the top paragraph of page 133.

Chair Fitzgerald stated, okay, we will close the public hearing portion and we will now turn it over to the Commissioners for their review and discussion and hopefully a decision.

Commissioner MacMillan stated, the CC&R's seem to be the problem but the Land Use Board of Appeals does not say that CC&R's are part of our criteria. It is not in our criteria. It is not enforced by the City. I feel like the applicants have met all the requirements for a bed and breakfast. With that said, I stay in bed and breakfasts all around the country. I think last year I stayed at ten bed and breakfasts. [A question was asked off microphone that was inaudible.] No, I'm just saying that I think that bed and breakfasts are in the community. Everybody that I've met in the last ten years at bed and breakfasts [have been] some pretty interesting people. They are high end, and they are not like transients coming in. I just wanted to say that. I know there is a concern with the CC&R's with the people that object to this application, but it is not one of the criteria. It's not anywhere in our criteria.

Chair Fitzgerald stated, okay...a ringing endorsement for B & B's across the country.

Commissioner Kellenbeck stated, I'll jump in just to reiterate what Commissioner MacMillan just stated. I do sympathize with the folks because they have CC&R's. They purchased the property and they thought they were not going to be having this in their neighborhood. I would say that they will have to go to court. It's a civil matter now and is not something that the Planning Commission can deal with.

Chair Fitzgerald stated, when you hear the Commissioners say it's a civil matter they are speaking of the enforcement of CC&R's as a civil matter, meaning the fact that the Commission and the City Staff have no enforcement authority to go out and say, "Ah yes, give me a copy of those CC&R's and I'll take care of that for you." It doesn't work that way. That's what they are discussing and they are saying it's a civil matter.

Commissioner McVay stated, the only question I had is that this has apparently has been in operation for two years, was that it, so why now do they want our permission?

Chair Fitzgerald stated, apparently it was brought to our attention through other things and now they get to come for a permit.

Associate Planner Glover stated, we received a code violation notification of the operation and then we contacted the property owners and they came in and filed for the application.

Chair Fitzgerald asked, is that the one that is Exhibit 5, the Code Enforcement request? Is that the one you were speaking of Associate Planner Glover... there is one, number four, I believe that's true... no that is the section.... There is another one that is Exhibit 6. I imagine it was Exhibit 4 that you were talking about.

Associate Planner Glover stated, I believe it was Exhibit 4 because we received a couple of them after some of the Homeowners Association members had spoke, so we received the first one and contacted the property owners and through that review process time period we received a second and third one.

Commissioner McIntire stated, I agree with Commissioner MacMillan and Commissioner McVay on their comments. There was one comment about the Development Code as far as land-use

and land-use conflicts. I wanted to address -- I know I'm reintegrating for us, but just for your consumption, we look at land-use as what the land-use is and that's it. What is best for the land-use in accordance with the Development Code; because it meets zoning requirements and because it meets Development Code requirements. We have no criteria here.... Even though I sympathize with your situation and what's in your CC&R's, and I really do, we have no criteria we can hang our hat on that we can disapprove this request, in my opinion.

Chair Fitzgerald stated, perhaps just before you make the motion.... Commissioner Arthur, did you want to say something more? Before you make the motion, the people refer to the CC&R's. They are covenants, conditions and restrictions. They are between the landowners. It's the landowners that agree to abide by them. It is not imposed by the City to make anyone that lives there to abide by them, it is a covenant that you have to one another and that you agree to do and that's why it's a civil matter. It's not a matter of Development Code at all. We can't even consider that as criteria. It is not part of the criteria for approval or disapproval at this hearing.

Commissioner MacMillan stated, I think it meets all the criteria so I make a motion to 13-1040001, 13-10500013, and 13-3010004....

Associate Planner Glover asked, Commissioner MacMillan, can I interrupt? The application number is 13-2010030.

Commissioner MacMillan stated, oh, I got the wrong thing.... 13-2010030, I propose that we accept the Minor Site Plan Review of Gillaspie Bed and breakfast; we approve the request.

Commissioner McIntire seconded the motion. Commissioner Fitzgerald called for a vote.

#### **MOTION/VOTE**

**Commissioner MacMillan moved and Commissioner McIntire seconded that the Commission approve the request. The vote resulted as follows: "AYES": Chair Fitzgerald, Vice Chair Coulter and Commissioners MacMillan, Arthur, Kellenbeck, McIntire, and McVay. "NAYS": None. Abstain: None. Absent: Regan.**

**The motion passed.**

BREAK: 10 minutes.



**b. 13-40500003: Adult Business/Use Text Amendment (Article 14 of the Development Code)**

PROPOSAL: An application for a Development Code Text Amendment for Section 14.630(2)(c)(3) of the Adult Business/Use section which will list the public park classifications of "community park" "neighborhood park" and "regional park" for buffering purposes. In addition, amending the definitions for "Adult Business" and "Adult Use" in Article 30, changing the minimum age reference of "21 years" to "18 years".

APPLICANT: Griess Family Brews, LLC

PLANNER: Lora Glover

Chair Fitzgerald stated, I am going to read the procedure for the legislative land-use hearing. We will begin the hearing with a staff report, followed by the public comment and then the matter will be discussed and acted upon by the Commission. Is there anyone present who wishes to challenge the authority of the Commission to consider this matter? Seeing none do any Commissioners wish to abstain from participating in this hearing or declare a potential conflict of interest? In this hearing the decision of the Commission will be based on specific criteria. We will begin with the staff report.

Chair Fitzgerald stated, this is going to be... we're talking now rather than a quasi-judicial this will be legislative. In this particular portion of our session tonight we will be discussing text amendments etc. These are recommendations that we will be making after discussion and review by the Urban Area Planning Commission. The Commissioners will make a recommendation to approve, disapprove, or abstain from to the city Council. This is not something that we put in place. It is a recommendation only to the higher authority of the City Council. This serves as a public hearing for you to have input whether pro/for, or against, or to change or whatever you have in mind.... This is your time.

Associate Planner Glover stated, tonight we are starting with a proposed text amendment for adult use and adult businesses out of Article 14 of the Development Code. The applicants are the Griess Family LLC. They are bringing the application forward mostly because they have a brewing license, a permit through the OLCC, and because of the type of permit for them to open up.... They brew in one location but they want to have a storefront downtown and because of our existing overlays and buffer restrictions on adult use, there is no place downtown actually, or very limited -- maybe 2 or 3 buildings -- where they could actually open up for this project and they are looking maybe at renting space in the Town Center shopping center plaza. The buffer

problems that we are getting into are coming from a little mini park that's located behind what used to be Home Valley Bank. I'll go through and show you some of that information.

The proposal is to amend section 14.630 under the listings for public parks. Right now any park within the City of Grants Pass has a 1000 foot buffer; whether it's a regional park, neighborhood park, open space, or a mini park. The proposal is to just list community parks, neighborhood, and regional parks. Thus Reinhart park, Riverside Park and those sorts of parks. The larger parks would still have the 1000 foot overlay. Some of our buffer zones overmatch, and you'll see that in a map in just a minute. The other thing that we needed to correct on the administrative side was to change our minimum age requirement under the definitions from 21 to 18. This was something that came from the City Attorney. He said we need to match up with state laws regarding cigarette sales or different things that come under that 18 age group. Right now we had everything at 21.

Right now the picture on the left is the outline of the central business district. The little blue spot right here is that mini park. I will go to a little bit larger map for you in a moment. I apologize, one drive is down so I can't access our GIS. This purple area is a 1000 foot buffer over that park and you can see how much of it affects the central business district. Right now the current buffer is for all of the different layers for the 1000 feet on the library, the 1000 feet on the parks, 200 feet on the residential, and possibly the school might be close enough in here so it pretty much eliminates all of the central business district. There is just this little wedge back down closer around J Street. If we remove the mini park from our overlay it pops out almost half of the central business district. This really hits the core area. It hits that 6<sup>th</sup> to 4<sup>th</sup> streets and G to H streets and a little bit farther on. This would also impact The Brewery if it opened back up. If it wanted to be a sports bar, right now it couldn't open back up into a business like that. We've had several inquiries. Jon Bowen who owns the Steam Laundry building would like to come in and do more of a music venue and because of the late hours OLCC will label that as age restricted. We've had 3 or 4 different property or business operators that are very interested in doing something down in that downtown core area, but we're limited now because of the mini park.

This is a little bit of a blowup area showing the impact of how it would open up. This is the mini park area here. You can still see the residential zone buffers. This area here is the 1000 feet of the library but it would open up the Towne Center Plaza area, the Historic District area, and then 6<sup>th</sup> Street and parts of 7<sup>th</sup> down to approximately J Street.

I'll bring it back for questions from you tonight, but at this point Staff recommends the Planning Commission recommend approval to the City Council. I did have one gentleman that

brought in his comments about the application tonight. Also, Mr. Anderson would like to open up a business on D Street. It would be an adult use business that would serve alcohol focusing more on alcohol than a balance of food. I believe he's close to the 115 Broiler. He's requesting that the library 1000 foot buffer zone be reduced. That's just another comment, but we have received quite a few interests in it.

Chair Fitzgerald asked, was there any consideration in taking the central business district layout and reverse engineering it rather than going the other way? Saying that these overlays cannot penetrate the district?

Associate Planner Glover interrupted, we've had quite a bit of past history with the adult use and potential uses. Part of the problem with adult uses is you can't limit the types of adult uses. If there are some that are more risqué that aren't to your taste, we can't start categorizing adult uses. We have to umbrella. The only way they felt to do it properly was with the different....

Chair Fitzgerald interrupted, you have this drawing and it shows the yellow outline of the central business district. I noticed that some of these overlays encroach over the yellow lines and some of them don't. Is it not possible to have the overlays cease to exist as soon as they crossed over that line?

Associate Planner Glover stated, that could be your recommendation.

Chair Fitzgerald stated, then everyone would know that they stopped at a specific place so that a person who happens to be in the town center, the central business district -- it seems a bit unfair just by where one of these overlays sits. You might be in and you might be out. It doesn't seem to be evenly placed. It seems to me to be "luck of the draw" kind of thing. One can have a restriction imposed on them by a park, or a school, or the library simply by the fact that they are on one side of the street or the other; but the central business district has codes and applications unto itself that are completely unique to itself so couldn't this be part of them?

Associate Planner Glover stated, we certainly can add that into your recommendation.

Chair Fitzgerald interrupted, I just offer it as an idea, instead of working backwards -- but it wasn't considered that way.

Associate Planner Glover stated, at a staff level we were only processing what the applicant was suggesting at this time.

Chair Fitzgerald asked, this is now you're DOA?

Associate Planner Glover stated, it's the applicant's request and that's what we are proposing.

*[Recorder's Note: Chair Fitzgerald made comments off microphone that were inaudible.]*

Commissioner Arthur asked, I know you ran by it but knowing when and why that park was created, how does this affect that same kind of situation? I know you just said something about how you can't pick and choose.

Associate Planner Glover stated, no, you can't pick and choose.

Commissioner Arthur asked, but that's what happens in this case?

Associate Planner Glover stated, that had been the concern at the time this mini park was developed. I think there is a lot of interest in maybe opening the central business district back up for more vibrancy and more businesses. We've had people that wanted to do a martini bar or even the wine bars and we can't approve them because of the current overlays right now. The Griess family wants to do the little beer tasting facility but because of the licensing through OLCC we can't get them there. There is a risk that the more adventurous bars or something that could possibly open up there, and I know that was a concern before that the Council was not interested in pursuing. So today we have this application and I think we are testing to see what the atmosphere is like.

Chair Fitzgerald stated, okay, are there any more questions of Associate Planner Glover? If not, I'm willing to open it up to public input. If you wish to speak, I need your name and address for the record.

Associate Planner Glover interrupted, we should start with the applicant first.

Chair Fitzgerald stated, I am going to have the applicant first and when you come up, will you give us your name and address.

Dave Griess (1961 Crow Road, Merlin) stated, I'm the president of Griess Family Brews LLC. We started a little home brewery probably about four years ago out of our kitchen. We moved into our garage and when we decided that we wanted to park our cars back in our garage, we moved it to our son's house here in town. We got a variance from the City to put a shed-type building in the back of his house. Basically, we brew beer. We are licensed by OLCC and the TBB which is a federal licensing board. Basically, we would like to be downtown and open a tap room. What we mean by a tap room is for tasting.... I guess we would call it a tasting room. We would serve our own beer. You could come in and taste it and hopefully buy a Growler which is a glass container that we could fill and you could take home and hopefully keep coming back. We believe for our business to really succeed we need to be downtown. We could do this in an industrial park in Merlin or outside of the city boundaries, but I just don't see how that could work. We would like to be part of the downtown area. The craft brewing business has exploded in the last few years. I think in 2012 it brought in \$34 billion to the economy of the United States. In Oregon alone it was a little over \$1 billion. It's an up-and-coming thing. Some people may see it as a fad, but 10 years ago didn't we all think Dutch Brothers was a fad? It's something that I think if we can bring it into downtown that could bring some more tourists in and something else for Grants Pass to say, "Hey, they've got breweries now in Grants Pass." Medford's trying to do it and Bend is a hotbed for it and the Portland area... It's something that's coming and I think if we can get something downtown it would be advantageous to both the City of Grants Pass and to us, obviously. Basically that's it. We're a family run company. My son is the brewer and my wife does everything else. I just sort of came along for the ride. That's about all I have to say. Thank you for your consideration.

Chair Fitzgerald asked, is this for consumption onsite...you are going to sell beer too, right?

Mr. Griess stated, this is to sell onsite...correct. As far as the downtown area, we sympathize with you with the situation with the adult business. I hate to be called an adult business but it's the way the OLCC licenses you. We brew off-site so if we want to sell it you have to be 21 and over. Thank you.

Chair Fitzgerald asked, does anyone else want to speak as the applicant? Then we'll open it up to the public. Does anyone wish to speak in favor or against?

Bertie Beck (234 Peppermint Lane, Grants Pass) stated, I own property within this area and my main objection is to the word adult. To me I don't object to these people opening a business in Grants Pass that fits into meet the criteria of our community. I don't think it needs to be a broad, change everything thing and allow what we turned down years ago. I think you could have a variance or some particular word other than... you have used the term adult several times in here and I think that's an appropriate. I can actually see it in the headlines, you know, "Grants Pass votes now to have adult businesses" or whatever. I think it's inappropriate and it sends the wrong signal about our community. I do not object to these people opening a business. I found it very difficult, what you sent me in the mail, to understand what you were trying to do or where you were trying to do it. It was not specific to these people and my objection is not specific to them or their business.

Don Hendrix (1335 NW Prospect, Grants Pass) stated, I own the business directly across the street. It's formally known as the Palace Hotel. That's on 201 SW G Street... Dons Bike Center...that's me -- I'm Don. We started this business 17 years ago and we have been up until the last eight months directly next door at 211 SW G Street. I will give you this background... In 17 years we've seen a lot of things come and go. We've seen some great changes and we've seen some scary events happen as well. I stand before you with mixed emotions. I like the idea a lot. I will probably frequent the location, but I have significant concerns as well based on... principally, the fact that I own the building that that park was so centrally originated for, so to speak, back when the adult business was going to be upstairs in the 201 Palace Hotel. Having lived through that and seen the activity to bring the park into place and fully functional as a prospective weapon against the business upstairs, I take it personally. The fact that I own it, makes it even more close to home. I want to read a statement from my wife and then I will conclude with a few more items. She writes, "As the change in this city ordinance it allows for more bars and taverns in the city business district, I would urge to use caution in a quick approval. I would ask the Urban Area Planning Commission to consider what the long-term effects might be on the downtown area. I know from my own business experience that when we opened our business on G Street there were three bars in existence at the time. We had weekly visits in our shop from barhopping customers who were looking for money. Those days have passed. However, there is still a

clientele that frequents the taverns and lingers in the downtown business area. In the past year they have presented local businesses and the City with problems difficult to deal with. I appreciate the desire to change the ordinance to bring in new business to our downtown. I'm concerned that you cannot always control what business comes into the area. Many of the building owners for the downtown area are out-of-state and do not concern themselves with the concerns of the business community. It wasn't that long ago that the City used this very ordinance to limit a certain business from opening in the downtown area. I believe that was a good decision, and well made. We might have a different downtown community if the balance of bars or taverns outweighed the balance of retail and restaurants. I urge you to give this further consideration for the long-term effect on our downtown business district." Another point that I wanted to make is, I'm kind of seeing both sides of the fence here because I think it could prosper and I think it could be a good thing. A serious concern I have is the gentleman who tried to establish his adult business --and I'll leave names out of it, but I hope you all know what I'm talking about -- I would hate to have this ordinance changed and him come back and sue the City because now they've changed the game where it was put in place before to prevent that kind of a business. Thank you for listening.

Councilor Riker (Grants Pass) stated, I'm not in favor or against this but I would like some clarification from Staff. On the adult business, is that definition that is in our ordinance... Is that dictated by ORS or was that a definition that the City of Grants Pass came up with when you wrote the code?

Associate Planner Glover stated, my recollection is it was through ORS and that it was, in a sense, the most defensible definition because we couldn't itemize types of uses under adult use but that was done quite some time ago when Ulys Stapleton was here.

Councilor Riker asked, so at this time you are alluding that things may have changed and we may be able to define it?

Associate Planner Glover stated, no, the only defining we can really do now is adjusting the age from 21 to 18; like through the OLCC, the adult use category is age restricted and you can't define it by use restricted. It's by age.

Chair Fitzgerald asked, is there anybody else who would like to speak on this matter?

Susie Griess (1961 Crow Road, Merlin) stated, I'm Dave's wife. We very much appreciate the problems in the past with the adult business that has caused this problem. In light of that I best would like you to take consideration and think of the years ahead of that incident and the years behind that incident. It was isolated. Yes, there are problems with transients, bars, and things like that but that is not just in this location. We just ask that you take a look at it. We have been with the Planning Department and we've looked at the maps with all of the overlays. The only place that we could do it is in the industrial area and that's not beneficial to Grants Pass tourism and to ourselves. Thank you.

Chair Fitzgerald asked, would anybody else like to speak on this subject? Seeing none, Staff was any other mechanism considered like a variance for this?

Associate Planner Glover stated, variances are only allowed for measurable standards and not for uses. [Someone asked off microphone to repeat the statement.] Variances are only allowed for measurable standards – such as height, setbacks, distances -- not for uses; specifically not for uses.

Chair Fitzgerald asked, would you like to rebut anything that was said...applicants?

Mr. Griess stated, like I said, we can appreciate what you're up against. I don't like the name adult business. When you hear adult business you think of one thing, in my mind, and we certainly aren't that. Quite frankly, I don't want that in Grants Pass either. I applauded the Commissioners when they did this 10 or 12 years ago. They did a great job of keeping that type of business out of Grants Pass. Basically, like I said, I hate the word adult business. Maybe there is a way around that. Obviously, a variance is not going to work by Associate Planner Glover's definition. I think our type of business would be good for Grants Pass. I understand what you're up against and maybe it needs more discussion. Unfortunately, that bad word, maybe a lawyer needs to look at it some more too. Anyway, that's all I have to say. Thank you.

Commissioner Arthur stated, Don, I wasn't aware that you had actually bought the Palace Building and you had moved over there.

Don Hendrix stated from the audience, no, that was me.



Commissioner Arthur stated, okay. My question really is for you (Mr. Griess). Are you primarily interested in that location just because it's a couple of doors down from your business?

Mr. Griess stated, no. We're not interested. Although my wife had talked to Mr. Hendrix about renting part of that... We are actually looking next to Papa John's or some empty spaces in there. That's what we're looking at right now. We're going to be rather small to begin with. That location would be great for us but we can't afford it.

Chair Fitzgerald asked, is there anything else from the Commissioners? Otherwise, I'm going to close the public hearing and take it into discussion. I will give you the benefit of what I asked Associate Planner Glover...that was about conditional use and making the adult category under the basis of conditional use permits. It can't be a variance, we know, but conditional use maybe; and therefore, they could be considered under an individual basis. So the conditional use may have something. I don't know if that was ever discussed in depth when they were considering your application sir or ma'am. I can certainly see the danger, but I can certainly see the fact that I don't think it's right for these people to have a legitimate business to somehow get kicked to the curb because....

Commissioner McIntire stated, a conditional use permit seems to me as something that can be very political. I would much rather have it written in stone rather than leaving it up to the whims of a few individuals to make a decision on what is going to be allowed and what is not allowed. That's all.

Chair Fitzgerald asked, what if there was conditional use but then we could develop criteria for the conditional use and if the person met the condition to criteria, just like everything else, it would then be an approval rather than it being like you're talking about... like today, no, yes tomorrow, and depending on who was hearing it at the moment....

Commissioner McIntire stated, it would still be up for interpretation and I'm against that.

Chair Fitzgerald stated, but whether or not something meets the criteria, it has a certain amount of interpretation. Some of us feel that at certain times, "that didn't quite meet the threshold" and others think "Well, it did meet the threshold." We do have a difference of opinion sometimes as

to whether something does or doesn't quite meet the criteria. However, we do have criteria as a guideline.

Commissioner MacMillan stated, I'm going to kind of go in a different direction and kind of direct my comments to the reason that we had that park put there to begin with because of the scariness of having an adult business downtown. I always felt like if that park....

Chair Fitzgerald interrupted, we didn't have the park put there.

Commissioner MacMillan stated, I know that.

Chair Fitzgerald stated, the park wasn't put there because of that business. The park was already scheduled to be there. The only reason is... I don't want to have a lawsuit from someone who wants to re-open the whole thing because we said we think we had it put there.

Commissioner MacMillan stated, I agree. I misspoke. All I'm saying is, if the business had gone in I always believed back then... If that business had gone in -- and we talked about this Chair Fitzgerald many times -- I don't know if that would've floated anyway. I don't think that this community would support that kind of adult business. I think we would definitely support the business that the Griess Family Brews are presenting. I think it would open up business downtown. I think this is really a good amendment. I think that the scariness that we've all felt with the previous experiences with the possible adult business that may have gone in, I think it would have failed anyway. That's my opinion. It was back then and it is now. I don't think it's what our community is about. I think our community is about a nice family brewery... and opening up this in downtown. Right now because of this amendment we've closed it off to businesses and I really think this is a good idea to open it up. That's why I'm really in favor of this text amendment. I understand the concerns of the word adult. That threw me off also, but because it's an ORS decision... An adult decision is to either use alcohol or other substances. We are scared of the other adult word that we don't like. I always felt like that business would have failed anyway. It ended up failing out in the county where they did have it. I thought it was going to fail. I thought it was a market deal that it would have failed anyway. I am totally in support of this text amendment. I'm recommending the City Council adopt this text amendment to open up business.

Commissioner Arthur asked, Associate Planner Glover, could you run by one more time that map on the left? If I understood you correctly, at this moment in time because of all the various setbacks and distances, that black area is the only area where an adult business could locate at this time, is that correct? You can't see clearly on that exactly what that is.

Associate Planner Glover stated, that area is the Thai Barbecue. I believe that's the corner down there. That's where it's at. I apologize, I was going to pull GIS up for you tonight and look at it larger but we are having issues there. There is a secondhand store on the eastside over there. It's that lower area in the central business district down on J and K Street. That could possibly have a new bar or whatever type of adult business down in through there. But even your classic sports bars are limited because of the type of license they get through the OLCC. We've tried to work with different restaurant wine tasting type facilities. We think it's okay and they come back with an OLCC sticker that has to go on the door and then we are in trouble. It's really frustrating to try to get the applicants down to make sure they are following our guidelines and then OLCC does something a little bit different. It's kind of like the Griess'. They were trying to do their Growlers and because they manufacture in one spot and they wanted to sell in the other we couldn't give them a permit. Yet I was able to give permit to a gentleman up on 7<sup>th</sup> Street almost directly across from Brighton Academy because he has a little more of a minimart with the Growlers. Because he had the minimart items he wasn't age restricted. It's very difficult working with the different levels of permits through the OLCC and to help people through the process.

Commissioner Coulter stated, I completely agree with Commissioner McIntire and Commissioner MacMillan. My thought process is that when you're looking at what's best for the land-use, for example, your business, I think, is very appropriate for the land-use. I know it could be a slippery slope as to...I'll say, different kinds of adult businesses and leave it at that, but I don't want to be governed by that fear. I want us to move ahead with what's best for our community and I think this fully fits what is best for that land-use. Also, I'm very much in favor of keeping with applicable and stuff in lowering the age from 21 to 18 in that part of the code. Without making a motion at this point, and allowing for further discussion with any of you, I like it. I like it a lot and I think we should go with it.

Chair Fitzgerald asked, will you make a motion?

Commissioner Coulter stated, yes, I'll make a motion. I'll make a motion that we recommend to the City Council that they approve... I'm making a recommendation that they approve and adopt this language into the Development Code.

Associate Planner Glover stated, I just want to clarify that there had been a suggestion that the whole central business district be included... I just want to make sure.

Chair Fitzgerald asked, would you entertain the suggestion that they look at making that... I just think it makes common sense to set up a whole bunch of properties. Would you consider amending your motion with that consideration?

Commissioner Coulter stated yes, recommend approval with that consideration of the business district as we have discussed.

Councilor MacMillan seconded the motion. Chair Fitzgerald called for a vote. It is unanimous and it's recommended that they do that with that stipulation.

#### **MOTION/VOTE**

**Commissioner Coulter moved and Commissioner MacMillan seconded that the Commission would recommend Council approve the text amendment but with consideration of treating the central business district in whole as discussed herein. The vote resulted as follows: "AYES": Chair Fitzgerald, Vice Chair Coulter and Commissioners MacMillan, Arthur, Kellenbeck, McIntire, Regan, and McVay. "NAYS": None. Abstain: None. Absent: Regan. The motion passed.**

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#### **c. 13-40500006: Planned Unit Development Code Text Amendment (Article 18)**

**PROPOSAL:** An application to amend Article 18 to include a review process for terminating existing PUDs.

**APPLICANT:** CSA Planning

**PLANNER:** Bill Cobabe

Chair Fitzgerald stated, this is 13-40500006 and it is a Planned Unit Development Code text amendment, Article 18.

Parks and Community Development Assistant Director Cobabe stated, thank you very much. How are you all doing tonight? It's gone a little bit better than I had hoped so that's good. This is a request from CSA Planning. It's a text amendment to our Development Code that deals with the revision and termination of PUD's. I should note that in your staff report... I was hoping it was clear. I don't know if the copies that you got came out in color or not, but the portion regarding the revision of the text amendment or of a PUD should have come out blue. That was initiated by the staff. The applicant requested the language in red. I did change it a little bit from what the applicant had originally requested. You can do a cross reference check on it.... It's not in color? Then it is going to be completely unclear... oh, it is in color, good. I did change the applicant's language to reference our code correctly and I did add the last paragraph. It's still in red but I added that paragraph regarding what would happen if a PUD was terminated and how that would relate to the rest of our code. I'll get to that in just a second. I just wanted to point that out to you as you look through the Staff Report and at the actual ordinance itself.

Just by way of background, a PUD is designed to give developers in the city more flexibility in the development process. If someone has a unique shape of a parcel or they want to do something that's innovative and nontraditional, then they can come in apply for a PUD and additional flexibility. This benefits the developer in that they are able to do things that maybe are not in fitting with the underlying zoning and they can get variances for setbacks or things like that so that they can put increased density -- those kinds of things. The City benefits by being able to put on additional restrictions or conditions so that it benefits the City as well. Currently there is no way for us to terminate a PUD. This becomes a problem when someone buys into a particular development that has been approved for a PUD but doesn't necessarily want to continue with the way the PUD was initially approved. So that PUD is kind of outstanding and it's in limbo and nobody knows what to do with it. Well, this provides a procedure for us to go ahead and both revise and to terminate an existing PUD.

Like I said, there are two portions. The first portion deals with revision of a PUD. Sometimes there are major revisions that need to take place due to market conditions or whatever. For example, I did a PUD once where there was a bunch of town homes that had adjoining walls. The developer wanted to come in and make those traditional lots, so he combined several of these skinny patio home type lots and made them into larger traditional quarter acre sized lots. In the jurisdiction that I worked for that was something that was in the code and so we just took care of it, but that's the idea. It's we would now have a mechanism to take care of that kind of revision at the City level. Of course, that would be driven by the applicant -- whether that's the existing applicant that wants to do something else or someone

else buys it and wants it to change around to fit the new market conditions... and their desires. That's something they could do. The second portion actually deals with the termination of an already approved PUD. Again, the amendment was initiated by CSA Planning. They initially proposed the language regarding the termination, but when we did our research into what the code says and what else is out there in the world we decided that having this language regarding revision was helpful as well.

Here are some specific details. There are procedures for filing a revision to an existing PUD and criteria for revision – similar requirements. The de minimus revisions mean it's so small it doesn't really need to come in front of you all like maybe they drew a lot line in the wrong place and they need to get that revised or it doesn't change the overall size of the lot maybe. It's that kind of thing that's more of a clerical cleanup kind of a thing than more substantive changes to which would of course come before you all.

Procedures for filing a termination to an existing PUD... This covers both things, if substantial completion or a substantial effort or work has been made on the PUD, or if it hasn't.... Sometimes PUD's are very large. They can be very large and they take several phases to do. If you are going to do a commercial phase may be upfront on a busy street and do multifamily residential behind. In that case maybe the commercial got done but residential never did and so there is this larger parcel out that nobody knows what to do with. The developer says, "You know what? I'm out of this game. I'm going to retire," and then he sells the parcel off and the new developer comes in and she wants to do something else with the parcel, maybe traditional lots, and she says, "This PUD is in force and I don't really want it" so then they can terminate that and have the remainder of the parcel be available for development. Then, of course, there is the final note there about "If a PUD is terminated that the underlying zoning and other subdivision and development conditions will apply." There are reference articles there that are specifically going to apply – setbacks and other development standards that we have that would apply. That was important to put in there, in case they thought it's a PUD and they still want to keep the small setbacks that were granted with the PUD but they don't want to have to deal with everything else. There would be a million variances and all kinds of hassle. The idea is that if you get rid of the PUD the underlying zoning comes back into play and everything else is applicable as far as subdivision standards and everything else. I think that's about it. We recommend that you recommend approval to the City Council of the proposed code amendment. I'm available for questions. The applicant is here. If you have questions for the applicant, he is here.

Commissioner Arthur stated, I have questions of you first. On page 168, paragraph 18a. In the discussion about 50% majority interest, maybe I'm a little dense because it's not real clear to me what the "and" portion is... whether it's just you have to have 50% of the vacant acreage and 50% of the assessed value of the vacant... I'm not getting the distinction there on 18-a(1).

Assistant Director Cobabe stated, my brain seems to be shut off too. The application form "Shall bear the signature of the owners who control and majority interest in more than 50% of the vacant land covered by the approved PUD and who are also the owners of the land and improvements within the within the PUD which constitutes more than 50% of the total assessed value of the vacant portion of the PUD." If you don't own and control 50% interest of the PUD then the PUD has to go forward. It stands. Does that make sense? That's who's going to make these changes. It's the majority landowner. If I were going to do a small PUD and have several lots and before I sold off all of the lots, I wanted to make a change to... I sold off one lot and then to make changes to the rest of the six lots that I had, maybe there was a seven lot PUD, then I still control the six so the person who owns the one owns part of the PUD but he or she doesn't necessarily have controlling interest in what goes on in the rest of the PUD. Does that make sense?

Commissioner Arthur stated, well, let's discuss the other part that addresses the recent thing. The C part that says "Further provided that..." The very end part... "Must determine that the proposed revision is compatible with the existing developed portions of the whole PUD....". It's a very loosely defined word there I would say. We've had other examples.

Assistant Director Cobabe asked, the word compatible, is that it?

Commissioner Arthur interrupted, yes.

Assistant Director Cobabe continued, that's so that you don't get an adult use next to an ice cream shop I guess. I don't know.

[A remark was made off microphone that was inaudible.]



Commissioner Arthur stated, yes, I know. The other one I'm thinking of, more recently, was the Chmelir one down off of Lower River Road where they sited with condos and they ended up with a care facility in the middle of it, combining lots. That would apply. Isn't that a situation?

Assistant Director Cobabe stated, it seems like it's worded this way so as to....

Chair Fitzgerald interrupted, that land was not part of that originally so that's why he was allowed to do that.

Commissioner Arthur stated, because they wouldn't have been able to do it under this requirement.

Chair Fitzgerald stated, it wasn't part of the original.... That piece that Chmelir had was not part of the original Rogue Lea Estates.

Assistant Director Cobabe stated, contrary to popular belief, we're not in the business of making people upset. We want this to be...

Chair Fitzgerald interrupted, it's a little different. This is for an existing PUD, that's why we're sitting here. He put a PUD in but the existing land that he was using was not part of an existing PUD that he changed. They combined lots but those were separate lots. They were not part of the mobile home park at the time.

Associate Planner Glover stated, residential care facilities are allowed in any residential... or any property that is zoned for residences. That wouldn't have mattered in this discussion.

Assistant Director Cobabe stated, you're right, and I think this is worded this way to provide flexibility and discretion, so that when it comes before you all you can say, "This wasn't in keeping with the spirit of the PUD," for a lack of a better term... "We approved this PUD with the understanding that it was going to be a single-family detached..." -- I don't know why you'd want a PUD for that, but I'm just saying... maybe you're putting in a hospital in here which is not in keeping with what we approved, then you need to probably terminate the PUD as it exists and come back with something that is more in keeping with what you want to do and then we can apply conditions on that. We can apply reasonable conditions, buffers and things like that.

Commissioner Arthur asked, will this termination language allow you to terminate two thirds of the un-done part?

Assistant Director Cobabe stated, yes ma'am. That's right.

Commissioner Arthur stated, show me where that is so.

Assistant Director Cobabe stated, in termination, it's (2)a-1 on page 169. It's similar language to what's on (1)a-1 on page 268. Basically, if you control and own 50% or more of the property or the value of the project you can make changes and/or terminate the PUD. I hope that makes sense.

Commissioner Kellenbeck stated, the applicant can make a request but it's up to the Planning Commission.

Assistant Director Cobabe out, yes. That's exactly right.

Commissioner Arthur stated, show me where you're saying it... Oh, the second part, "If substantial development has occurred." Is that the portion?

Assistant Director Cobabe stated, yes. I'm sorry, that's under (2)b on page 169 and that's "If substantial..." then there is a completely different set of regulations... regarding if a substantial portion has been completed then a different set of requirements would apply. They are similar but they are just different. I guess that doesn't make sense. [Conversation occurred off microphone that was in audible.]

Commissioner Arthur stated, on that one in \_\_\_\_\_ ...applied to the entire PUD. What do you mean?

Assistant Director Cobabe stated, yes ma'am it does. That's what it is saying. It's unclear maybe, but that's what it's saying. If there is an HOA that applies anywhere in the PUD then they have to be consulted and they have to provide addresses and things like that to the

applicants or to the City so that we can notify everybody who would be affected by any changes to the property.

Commissioner Arthur stated, it doesn't read like that.. to me it seems to imply that any portion of an association that existed partially, actually becomes whole, governs the whole.

Assistant Director Cobabe stated, what this is saying is if you take the PUD as a whole and there exists a Homeowners Association, not homeowners, but any kind of owners or association in the PUD at all within the boundaries of the whole PUD that they must be notified and....

Commissioner Arthur interrupted, well, yes. I'm not objecting to them being notified. It just seems to imply that if any is there it's the whole thing even though it's not fully developed.

Assistant Director Cobabe stated, true.

Commissioner Arthur continued, I don't see how that gets us out of that recent dilemma that we were in.

Associate Planner Glover stated, I think the difference on the previous application, Parkview Terrace or Maple Park, is that phases 2 and 3 are not part of the Homeowners Association so it's a different project.

Commissioner Arthur stated, this doesn't say that.

Assistant Director Cobabe stated, I'm sorry... I know I'm not addressing your specific concerns. I don't have the same history and background of all of the PUD's that have gone through. I apologize for that.

Commissioner Arthur stated, I think the problem here is it doesn't address phased development.

Assistant Director Cobabe stated, it really does.

Commissioner Arthur stated, I don't see it.

Assistant Director Cobabe stated, it's saying that if there is an association of owners anywhere in the PUD, that they have skin in the game. [Chair Fitzgerald asked a question off microphone that was inaudible.] Yes, that's why it's owners and not homeowners, per se, yes sir.

Commissioner Arthur stated, it appears to me that the wording implies that if there is any that they sort of become the whole owners association even though maybe they are only the first 25% phase.

Chair Fitzgerald asked, okay, how would you want to change those words?

Commissioner Arthur stated, I don't know.

Chair Fitzgerald asked, is there another way of saying this so that you feel it would be more clear.

Commissioner Arthur stated, yes. I think somewhere it should address the concept of phased development and I don't see that.

Assistant Director Cobabe stated, the problem is the phases don't always apply. Would you put in a clause saying, "If a PUD has phases and any portion of the phases have been approved and developed and have an owner's association" kind of thing so that you're pulling them in. Is that what you're trying to do? I guess I'm not understanding....

Commissioner Arthur stated, you are being too literal to that thing about notification. Nobody is objecting to anybody being notified about anything. It's just that this is kind of an all or part budget doesn't really clearly, for me, define the concept of phase – phases that were approved and in place, and built, and ones that are not and what applies when.

Associate Planner Glover stated, if I can jump in for just a moment... I think part of our phasing process is that we could have a three-phase PUD or subdivision and the first phase final out and records and phases 2 and 3 may never record. They are almost in their own entity then because it's a final plat for phase 1 and a final plat for phase 2. It's really separate developments at that point that were tentatively approved in separate in phases but became

final individually. I think this language would cover that. If phase 3 wanted to come back through it's not going to have an owner's association.

Commissioner Arthur stated, I don't see how it really says that in here though.

Associate Planner Glover stated, I'm not sure if it really needs to from a processing aspect. I don't think it needs to be that specific because the tentative approvals could expire and not be valid anymore and a different application could come in.

Chair Fitzgerald stated, maybe this will become clear.... We'll throw all of this on Craig Stone and we'll blame him if it doesn't work, so we have a scapegoat. Maybe we should get on with the scapegoat. Mr. stone is that possible? Are you okay with that?

Craig Stone (4497 Brown Ridge, Ste 101, Medford) stated, I am president at CSA Planning and we come before you this evening at the behest of our client, Asante. This has to do with the Washington campus. Before I tell you really the reasons for coming forward, let me see if I can address some of your issues. Like Assistant Director Cobabe, I am not as familiar with your formal PUD processes or how they might have been applied in the past to phase developments but I think your questions are good ones. If I understand correctly there were two. In a phased PUD you have a homeowners association or an association of owners. Let's say that would get formed in the first phase after it was done of a 10 phase PUD. As more development and more phases were done then the association has broadened to include those. That's just the way those things would work. I don't know if that answers your question but the homeowner association expands with the developing of the PUD. The new homeowners in the new phases become members of the association.

Chair Fitzgerald stated, that might tie into the fact of the class of voting. Because in HOAs sometimes there are different classes of voting so as it comes in.... The developer has, for instance, one class as it's going through and as he finishes that phase he steps out of that class of voting and it goes to the owners. There is a turnover meeting. I think all those will probably, I believe, kind of settle out. I don't know that you could write all of that in here because so much of it would be sequential as it takes place. I don't know how many different classes of voting you could probably put into HOAs that are registered with the Secretary of State. I don't know.

Mr. stone stated, the purpose of this is not to govern Homeowner Associations. They are governed by their own rules that are put in place typically by the owner of a project before it gets turned over. That really doesn't have anything to do with terminating a PUD. It has to do with complying with the State Community Planned Development Statute. Let's set that aside and not get too confused about it. I want to go to the second question which is, "What do you do if you have a multiphase project and you want to terminate just one phase? Can you do that under the terms of this ordinance?" What I would tell you is you could but it would require that you interpret the ordinance to do that. If you want to make a specific provision for it then I think you want to do it now. Simply say a PUD in whole or in part may be terminated with the setup language in the termination section and I think that gives you the latitude that you're looking for. [Conversation occurred off microphone that was in audible.] I don't have the same page numbering that you do so I'm just going off of subsection 2 where it says, "A PUD may be terminated by action of the Urban Area Planning Commission subject to the following procedures." To make it explicit you could say, "A PUD may be terminated in whole or in part by action of the Urban Area Planning Commission subject to the following procedures." [Again conversation occurred off microphone that was inaudible.] I think that's where you would want to put that in. If this is a change that you would like to see and is included in your motion then we will go back and work with Assistant Director Cobabe and his staff and come up with final language that could then go before the Council, but I understand your concern. I'm not belittling it in any way.

Commissioner Arthur stated, I can't even remember your PUD. How old is this one that you are asking to be terminated?

Mr. Stone stated, it's a pretty old one. It's what Asante refers to as the Washington Campus where the old hospital was located.

Commissioner Arthur asked, what does the PUD date from?

Mr. stone stated, I don't know. It was the 1970s or 80s, I believe. I'll tell you, we've been charged with redeveloping the site and coming up with a redevelopment plan and before we can really move forward we have to be able to terminate the PUD that's already been approved. We looked through the ordinance and there was no specific authority to terminate or revise a PUD.

Commissioner Arthur stated, so yours is the third category it sounds like because the two here in (a) and (b), which are: 1) if nothing has occurred, and; 2) if substantial development has occurred.

Mr. Stone stated, no, we would fall under that sine substantial development has occurred within this PUD.

Commissioner Arthur asked, within the PUD?

Mr. Stone stated, yes. The hospital was built and then there were a number of other....

Commissioner Arthur interrupted, I wasn't sure what was included in that existing PUD.

Mr. Stone stated, it's more than just the hospital. It includes a number of other medical office buildings and other buildings surrounding...or not exactly surrounding, but in that immediate vicinity.

Commissioner MacMillan asked, so would you like to see a change?

Chair Fitzgerald stated, if you would like to see something more clear... in that realm, when we talk about a recommendation to the City Council we should do that. We should say that we would prefer it to be more clear where there is phasing involved... Commissioner Arthur, if it's confusing now then I think it's well taken that it can be confusing later.

Commissioner MacMillan asked, Commissioner Arthur would you put in under (b) then, "If substantial development of a PUD, whether in whole or phased..." is that where you would put it in?

Chair Fitzgerald stated, no, you could merely just say that you want some different language dealing with phasing and so forth because it's not quite clear. That's all, then let them draft what it is and then have it come back and say, "What about this or how about that?" I think rather than us creating it, perhaps it would be better just to have those eyes that have that expertise take a look at it and they can say, "It'll make it more clear if we do this and if we do that." You can look at it then and say, "Yes, that's better." How is that?

Commissioner Arthur stated, another one is Commissioner MacMillan's favorite about the PUDs is the benefit. When you've already developed like this one, where does that kind of thing come in?

Chair Fitzgerald stated, one of the things that Staff brought up was the fact that if there were such things as setbacks that had been altered, etc., then those disappear when it's terminated. They don't go down the laundry list and say, "Well, we would like to keep this one that we had in for the PUD but the rest of it can go away." If it goes away, it goes back to its original setbacks and it comes under a whole new set of circumstances. They don't get to cherry pick.

Commissioner Arthur stated, it goes back to the underlying zoning.... Okay.

Chair Fitzgerald interrupted, it goes to what it was before and they don't get to keep this setback, that setback, that height or that \_\_\_\_\_.

Mr. Stone stated, it allows the property owner to go back and start at square one.

Chair Fitzgerald stated, the gazebo goes away too.

Commissioner MacMillan stated, the subjectivity of an exchange is still in there.

Chair Fitzgerald stated, it goes away.

Commissioner MacMillan stated, right... It goes away, so the Commission would relook at it all.

Chair Fitzgerald interrupted, it goes away and goes back to what it was and it has to come to us.

Commissioner Arthur stated, so they may or may not come back with another PUD.

Chair Fitzgerald stated, the owner gets to go back to square one, wipe the slate clean and come in with a new site plan and say, "This is what I want to do." He is now subjected to whatever that particular zoning will enforce.



Commissioner Arthur stated, it might or might not be a PUD on the next land use.

Chair Fitzgerald stated, he can, but then he's up to it all over again. We get to hear it and say, "No. We don't think so. You know that gazebo you had last time isn't going to get it this time." Okay?

Mr. Stone stated, Mr. Chairman one final point. We were commissioned to write Medford's PUD ordinance for them a number of years ago, and I wrote it. This is largely taken from that and it's been relatively successful in Medford. I'm not aware of any challenges under these provisions that have gone to court. There simply needs to be a way to terminate. We gave the City the termination language as well as the revision language. Our interests are really in the termination, but having revision language in your code is also not a bad thing and it was taking place before you. Assistant Director Cobabe, in his comments mentioned the diminimus change and I'm going to tell you the same thing I told the Medford Planning Commission and the City Council before they adopted it. That is a process out of my head, because so many times you have approved PUDs or other applications and somebody wants to come in and make a change that is so minor is to just not merit hardly any attention at all but Oregon law really doesn't provide for that. Oregon law says, "No, you give notice and you conduct a public hearing. All parties can come in and enter their testimony and evidence into the record. You make a decision and it's gets mailed out...". The whole process to do a change that is so small and insignificant that nobody is really paying attention to it, or even cares... so I put that in. It has not been a problem, but I'll tell you it's probably legally vulnerable. I just want to lay that on the table. I tried to take a little of that edge off of it by saying if while the proceedings were open and somebody says, "Hey, if you make diminimus changes, I want to know about them," then they are entitled to receive notice and request a hearing. I think this is thin ice stuff but some of the processes are just so incredibly complex for doing such minor things... I put it in. Medford has had it now for 10 or 15 years and there have never been any challenges under it, mostly because nobody cares about those kinds of changes.

Assistant Director Cobabe stated, I think Mr. Stone is being humble and I appreciate that. This is a good ordinance. Our City Attorney has looked at it and has not had any comments regarding the diminimus. In fact, the Planning Director and I both feel like this is good language to have in there because it's a housekeeping thing. The housekeeping thing doesn't need to go through the whole rigmarole of just getting something incredibly minute fixed. Of course, if it

feels like it's substantial and substantive, of course we're going to put that in front of you and get the full meal deal. The diminimus, we feel like it is a good thing. It's going to save everybody time and money. I think Mr. Stone is right in saying that the potential for being challenged on it is relatively low.

Chair Fitzgerald asked, is there anything else from Mr. Stone? Then you are excused Mr. Stone...you got out of this one easy. We'll open it up to the public. Would anyone like to speak on this particular subject for or against...make comments or anything else? Seeing none, okay, then we'll close the public hearing and return it to the Urban Area Planning Commission. What's your pleasure here? Do we want to talk about the facts of what Commissioner Arthur was speaking about? This is the time, Commissioner Arthur, for you to put your comments in.

Commissioner Arthur stated, if this language on termination was in our code... the Parkview people could have come in and asked for the termination of the later phases or do the later phases not exist until they're done?

Associate Planner Glover stated, the later phases don't exist yet because they are not final platted.

Commissioner Kellenbeck stated, I will make a motion that we recommend the City Council approve this amendment as written.

Chair Fitzgerald asked, as it's written? You don't feel it requires any further improvements to the language for phasing as Commissioner Arthur was speaking to, and Commissioner Arthur are you happy with that? We have a motion that has been made and seconded by Commissioner McIntire. Is there discussion? No discussion on that Commissioner Arthur?

Commissioner Arthur stated, no.

Chair Fitzgerald asked, are you okay with it, because this is where if you want to put it in this is the time you need to put it in. Seeing none, we'll call for the vote.

## **MOTION/VOTE**

**Commissioner Kellenbeck moved and Commissioner McIntire seconded that the Commission would recommend City Council approve the text amendment as written.**

**The vote resulted as follows: “AYES”: Chair Fitzgerald, Vice Chair Coulter and Commissioners MacMillan, Arthur, Kellenbeck, McIntire, and McVay. “NAYS”: None.**

**Abstain: None. Absent: Regan. The motion passed.**

### **d. 13-40500004: Comprehensive Plan/Master Transportation Plan Amendment**

**PROPOSAL:** An application to incorporate the “Spalding” Traffic Impact Analysis into the Master Transportation Plan.

**APPLICANT:** City of Grants Pass

**PLANNER:** Bill Cobabe

Assistant Director Cobabe stated, the Spalding industrial area is an area in the southeastern-most quadrant, more east than south of Grants Pass. It is an area that is experiencing growth. If you have been down in the area, you know what it's like, and it's anticipated that as it continues to grow there will be pressure for development that is put... We have some urban growth boundary areas out there. There are areas that are largely vacant and there are areas that are developing currently. The impact on the traffic is something that we need to consider. In recognizing this, in 2012 the City Council authorized a study and the engineering firm produced what's called a technical memorandum, which encompasses this Traffic Impact Analysis of the area. It can help provide both immediate actionable items as well as provide guidance for future development in the area. It's comprised really of parcels that are south of Grants Pass Parkway and north of the railroad. It's kind of in there but it's moving out towards the eastern side of the city. We have a pretty good mix of uses in the area – residential, commercial, and industrial. This is basically roughly the area that it's bounded by, you can see on the left there what they've called west of Agness and then you've got east of Agness on the right and then there are some vacant residential parcels that are not currently in the city limits but within the UGB on the northernmost portion there.

The initial study shows that most of the intersections and roads in the area are functioning pretty well. There is one intersection, the intersection at Agness and Grants Pass Parkway, that is currently operating below an acceptable level of service and the study bears that out. It talks about what anticipated growth could be in the area and what the impact would be on the roads. It provides for mitigating that growth. The Master Transportation Plan is the

transportation element of the Comprehensive Plan. It says Comprehensive Plan and Master Transportation Plan kind of together there, but really we are just doing one thing here and that is changing the way that this area will develop in the future based on the guidance that we receive from this technical memorandum. With that we are recommending approval. We are recommending that you recommend approval to the City Council of the proposed amendment to the Comprehensive Plan and Master Transportation Plan. We don't have an applicant. We are the applicant on this one.

Chair Fitzgerald asked, am I wrong in looking at your map on page 182, that right there? The area that you have looks like it's sitting on the top of Foothill right there, is that as we know it in the UGB expansion as H?

Assistant Director Cobabe stated, yes sir. That's correct. That's County H on the far right.

Chair Fitzgerald stated, so that is resource land. It's zoned resource land right now.

Assistant Director Cobabe stated, I'm not sure what the designation means. It's slated to be industrial land.

Chair Fitzgerald stated, it is currently resource land. There is no question about it. In the UGB expansion it's designated and a big argument is about the fact of how we can... since the DLCD says, "You cannot bring in resource land unless you have expired every other effort in order to get other lands that are exception lands, etc., brought in and you have no other choice. I see here we are marking a resource land and putting it into a technical memorandum. I'm wondering why.

Assistant Director Cobabe stated, it's because we need to look at that as potential for future development. It's not just suggested that this is a plan for us to go out, grab that land, and pull it into whatever development takes place out there. Obviously, if there are restrictions like being a resource type land then we're not going to go out and grab that and turn it into industrial land tomorrow. However, looking down the road, in 30 years what are we going to look like? That's what we have to consider. That's the scope of this technical memorandum.

Chair Fitzgerald stated, I have questions why we are using resource land in this. I think it flaws the idea because of the fact that there is plenty of other land. We haven't run out of other lands so we can bring in resource lands. I'm questioning why we have clearly noted something that, I thought, had not been settled quite yet. Why is it in this report that was done and how long would this report originally commissioned to start with? How many years ago was it started?

Assistant Director Cobabe stated, it was commissioned in 2012. The report was finished in October 2012 and, I believe, when it was given to the city.

Chair Fitzgerald asked, so this idea of H was on the minds as a potential for this technical memorandum at that time?

Assistant Director Cobabe stated, it's already in the City's UGB if I'm not mistaken.

Chair Fitzgerald stated, no, H is not. It's in County land. It's a resource land and it was put into resource land by Spalding himself as a buffer to make sure that there were no other mills to be able to come up behind him.

Assistant Director Cobabe stated, I'm sorry.... Associate Planner Glover is helping me out here. Thank you Associate Planner Glover. Look on page....

Chair Fitzgerald interrupted, it's in the County zone up here on your other map on page 183 too.

Assistant Director Cobabe stated, okay, 183...the red area, that's not included in the Traffic Impact Analysis.

Chair Fitzgerald interrupted, no, the area that you have here on page 182, that map that is on top there, if you take Foothill... that's H isn't it?

Commissioner MacMillan stated, no, area H is over here.

Assistant Director Cobabe stated, it's that area that's blocked out of the impact analysis.

[Conversation occurred off microphone that was inaudible.]

Chair Fitzgerald stated, this is County H where you go out – it's H and H-2, which is Colvin's, where you go along Foothill and on your right is Spalding's property and under the bridge on the other side is Colvin's.

Assistant Director Cobabe stated, I was mistaken...it's not in the study. That was my mistake.

Chair Fitzgerald stated, that's why I was concerned. If it was in I had a problem with that.

Assistant Director Cobabe stated, you're right, that was my mistake. It sits in this area up on the right corner. We're not touching that area. We're not worried about that. Thank you. That's a good concern obviously.

Commissioner Coulter stated, Chair Fitzgerald, it is discussed on page 196.

Assistant Director Cobabe stated, these are the assumptions that they went on... that this would stay as a farm resource property for the foreseeable future. Do you all have any other questions for me?

Chair Fitzgerald stated, Seeing none, I will call for public comment. Seeing none, I'll close the public hearing and return it to the Commission for deliberation.

Commissioner Kellenbeck stated, I think we are ready for a motion so I will move that we make a recommendation to the City Council to approve the amendment.

Commissioner Coulter seconded the motion. Seeing no further discussion was needed, Chair Fitzgerald called for a vote.

#### **MOTION/VOTE**

**Commissioner Kellenbeck moved and Commissioner Coulter seconded that the Commission would recommend to City Council to approve the text amendment as written. The vote resulted as follows: "AYES": Chair Fitzgerald, Vice Chair Coulter and Commissioners MacMillan, Arthur, Kellenbeck, McIntire, and McVay. "NAYS": None.**

**Abstain: None. Absent: Regan. The motion passed.**

## **5. CITIZEN INVOLVEMENT COMMITTEE:**

### **a. Items from the Public: None.**

## **6. ITEMS FROM STAFF:**

Associate Planner Glover stated, we have received appeals on both applications from last time, Parkview Terrace and Challis Heights. Those will be moving forward to the City Council. Challis Heights is being postponed for a bit as they are trying to work out some issues with BLM and maybe bringing in a revised tentative plan to show whether... for the Planning Commission's suggestion why a road or a street can't go up through the golf course property there too. I'm not sure how far out that one will be, but Parkview Terrace should be before the City Council February 5.

## **7. ITEMS FROM COMMISSIONERS:**

Chair Fitzgerald stated, I asked you about the fact that I'm going to make a statement... this is on the City Council Goals Setting. This will be on Friday, January 10, so if there are some goals that the Urban Area Planning Commissioners would like to have me relate to the City Council let me know.

Commissioner Arthur stated, I sent information to the Council and Jim Moore about trying to clarify and make sure that they were operating from correct assumptions in discussing anything to do with River Road Reserve planning in the hopes that there might be some preliminary planning. I got an email back today from Councilor Morgan finally answering the question I had asked a couple of weeks ago. Apparently the 10-year lease to the Krauss pretty much locks that out of anything for the next 10 years. My thinking was, I was hoping they would appropriate a little something for some preliminary planning, so we didn't run into the same kind of thing we went through for years out in Redwood until they finally put up a couple of hundred thousand dollars to do the engineering for Redwood Avenue so that we didn't have to delay everything else going on based upon the engineering specifications for that...so that seems to be a moot point. Another item I brought up at the forum, that evening, was that I see a lot of postings on

Facebook and elsewhere about the potential problems with urban agriculture with front yard gardens, chickens and rabbits and that kind of stuff. Our municipal code and development code disagree with each other on the small animal regulations. I think that's something that they should set some money aside for... If it's not in the goals then they can't assign some planning staff time to work on those things right? I see it coming up someday like the cell tower thing did where we asked for years to have something in place before we were presented with the problems. It's not a huge problem but it's something that can be addressed. The animal part has been pretty well addressed by White City. Some group up there came up with how to handle all the rest of the animals besides dogs and cats that was pretty workable. We could do some borrowing and looking into that, but the whole thing about converting your property to garden and keeping the neighbors happy and the City happy, we really don't address that, I don't think, right now.

Associate Planner Glover stated, we do have front yard landscaping requirements but it's only for the first 10 feet of the front yard.

Chair Fitzgerald stated, so in theory you could landscape the first 10 feet and have the rest garden and you would be in compliance. What you are also talking about the animal beyond the dog and the cat and the bird right? There was that story a while back about the fact of a chicken that was supposedly a therapy chicken. What do we do if we get a therapy gorilla or chicken? What do we do?

Associate Planner Glover stated, we have different rules on exotic animals. The municipal code, if you'll let me finish, does allow for chickens. The municipal code does. The development code does not. The municipal code overrides the development codes, so we've just backed off on that issue and let the CSOs handle issues with chickens.

Commissioner Arthur stated, the specific case came up because my daughter lost her best friend over the 4-H rabbits that they had over there by North Middle School. They had a house with an attached garage and then a separate shop building and they had probably at the time 25 or 30 rabbits that were all exotic species that they were showing at the shows and everything. They got noticed because a neighbor saw the big doors were open and there were animals in there. That didn't go well. There really wasn't any interference. They weren't making any noise. They weren't being sold for meat. They weren't doing anything else.



Chair Fitzgerald stated, your envisioning, of course, since we sat on the urban growth boundary expansion together for 6 ½ years, the fact that as we move into -- particularly the Redwood area where we've heard a great deal about animal husbandry -- that this is going to become more and more prominent, is that your point? If it's not already prominent?

Commissioner Arthur stated, it could be right here.

Chair Fitzgerald asked, it's certainly going to get exacerbated when that happens isn't it?

Commissioner MacMillan stated, when I was in Boise last year it may be a problem also because of the new movement towards new foods. When you said that I thought, "Oh my goodness, this could really explode."

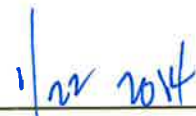
Chair Fitzgerald stated, I think your point is well taken. You know, the fact that we did for a long time want to have something to deal with cell towers... We were actually having hearings on the criteria for... I believe the ham radios and CB towers was the criteria we used... and TV antennas for cell towers initially. I can see your point. If you guys have something that you would like just email it to me and I'll try and put it into my spiel. Just email it to me. If I don't hear from you I'll assume everything is just copasetic.

Commissioner McIntire commented to the audience that were on his appreciation they were there.

## **8. ADJOURNMENT:**

Chair Fitzgerald adjourned the meeting at 8:35 p.m.

  
\_\_\_\_\_  
Gerard Fitzgerald, Chair  
Urban Area Planning Commission

  
\_\_\_\_\_  
Date

These minutes were prepared by contracted minute taker, Wendy Hain.